

**ASSEMBLY BILL**

**No. 44**

**Introduced by Assembly Member Pacheco**

December 2, 2002

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An act to amend Section 366.21 of the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as introduced, Pacheco. Dependent children: juvenile court hearings.

Existing law provides for the notification of various parties regarding juvenile court proceedings to determine, review, revise, or terminate the status of a child as a dependent child of the court. Chapter 416 of the Statutes of 2002, operative January 1, 2003, revised and recast those notice provisions. Chapter 918 of the Statutes of 2002, operative January 1, 2003, did not incorporate those revisions.

This bill would incorporate and reference the revisions in the notice provisions that are contained in Chapter 416 of the Statutes of 2002.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 366.21 of the Welfare and Institutions
- 2 Code is amended to read:

1 366.21. (a) Every hearing conducted by the juvenile court  
2 reviewing the status of a dependent child shall be placed on the  
3 appearance calendar. The court shall advise all persons present at  
4 the hearing of the date of the future hearing and of their right to be  
5 present and represented by counsel.

6 (b) Except as provided in ~~Section 366.23 and subdivision (a) of~~  
7 ~~Section 366.3, notice of the hearing shall be mailed by the social~~  
8 ~~worker to the same persons as in the original proceeding, to the~~  
9 ~~child's parent or legal guardian, to the foster parents, relative~~  
10 ~~caregivers, community care facility, or foster family agency~~  
11 ~~having physical custody of the child in the case of a child removed~~  
12 ~~from the physical custody of his or her parent or legal guardian,~~  
13 ~~and to the counsel of record if the counsel of record was not present~~  
14 ~~at the time that the hearing was set by the court, by first class mail~~  
15 ~~addressed to the last known address of the person to be notified,~~  
16 ~~or shall be personally served on those persons, not earlier than 30~~  
17 ~~days nor later than 15 days preceding the date to which the hearing~~  
18 ~~was continued. Service of a copy of the notice personally or by~~  
19 ~~certified mail return receipt requested, or any other form of actual~~  
20 ~~notice, is equivalent to service by first class mail.~~

21 The notice shall contain a statement regarding the nature of the  
22 hearing to be held and any change in the custody or status of the  
23 child being recommended by the supervising agency. The notice  
24 to the foster parent, relative caregiver, or a certified foster parent  
25 who has been approved for adoption by the State Department of  
26 Social Services when it is acting as an adoption agency in counties  
27 that are not served by a county adoption agency or by a licensed  
28 county adoption agency shall indicate that the foster parent,  
29 relative caregiver, or a certified foster parent who has been  
30 approved for adoption by the State Department of Social Services  
31 when it is acting as an adoption agency in counties that are not  
32 served by a county adoption agency or by a licensed county  
33 adoption agency may attend all hearings or may submit to the court  
34 in writing any information he or she deems relevant *Sections 294*  
35 *and 295, notice of the hearing shall be provided pursuant to*  
36 *Section 293.*

37 (c) At least 10 calendar days prior to the hearing, the social  
38 worker shall file a supplemental report with the court regarding the  
39 services provided or offered to the parent or legal guardian to  
40 enable him or her to assume custody and the efforts made to

1 achieve legal permanence for the child if efforts to reunify fail, the  
2 progress made, and, where relevant, the prognosis for return of the  
3 child to the physical custody of his or her parent or legal guardian,  
4 and shall make his or her recommendation for disposition. If the  
5 child is a member of a sibling group described in paragraph (3) of  
6 subdivision (a) of Section 361.5, the report and recommendation  
7 may also take into account those factors described in subdivision  
8 (e) relating to the child's sibling group. If the recommendation is  
9 not to return the child to a parent or legal guardian, the report shall  
10 specify why the return of the child would be detrimental to the  
11 child. The social worker shall provide the parent or legal guardian  
12 and counsel for the child with a copy of the report, including his  
13 or her recommendation for disposition, at least 10 calendar days  
14 prior to the hearing. In the case of a child removed from the  
15 physical custody of his or her parent or legal guardian, the social  
16 worker shall, at least 10 calendar days prior to the hearing, provide  
17 a summary of his or her recommendation for disposition to any  
18 court-appointed child advocate, and any foster parents, relative  
19 caregivers, certified foster parents who have been approved for  
20 adoption by the State Department of Social Services when it is  
21 acting as an adoption agency in counties that are not served by a  
22 county adoption agency or by a licensed county adoption agency,  
23 community care facility, or foster family agency having the  
24 physical custody of the child.

25 (d) Prior to any hearing involving a child in the physical  
26 custody of a community care facility or a foster family agency that  
27 may result in the return of the child to the physical custody of his  
28 or her parent or legal guardian, or in adoption or the creation of a  
29 legal guardianship, the facility or agency shall file with the court  
30 a report containing its recommendation for disposition. Prior to the  
31 hearing involving a child in the physical custody of a foster parent,  
32 a relative caregiver, or a certified foster parent who has been  
33 approved for adoption by the State Department of Social Services  
34 when it is acting as an adoption agency or by a licensed adoption  
35 agency, the foster parent, relative caregiver, or the certified foster  
36 parent who has been approved for adoption by the State  
37 Department of Social Services when it is acting as an adoption  
38 agency in counties that are not served by a county adoption agency  
39 or by a licensed county adoption agency, may file with the court  
40 a report containing his or her recommendation for disposition. The

1 court shall consider the report and recommendation filed pursuant  
2 to this subdivision prior to determining any disposition.

3 (e) At the review hearing held six months after the initial  
4 dispositional hearing, the court shall order the return of the child  
5 to the physical custody of his or her parent or legal guardian unless  
6 the court finds, by a preponderance of the evidence, that the return  
7 of the child to his or her parent or legal guardian would create a  
8 substantial risk of detriment to the safety, protection, or physical  
9 or emotional well-being of the child. The social worker shall have  
10 the burden of establishing that detriment. The failure of the parent  
11 or legal guardian to participate regularly and make substantive  
12 progress in court-ordered treatment programs shall be prima facie  
13 evidence that return would be detrimental. In making its  
14 determination, the court shall review and consider the social  
15 worker's report and recommendations and the report and  
16 recommendations of any child advocate appointed pursuant to  
17 Section 356.5; and shall consider the efforts or progress, or both,  
18 demonstrated by the parent or legal guardian and the extent to  
19 which he or she availed himself or herself of services provided.

20 Whether or not the child is returned to a parent or legal guardian,  
21 the court shall specify the factual basis for its conclusion that the  
22 return would be detrimental or would not be detrimental. The court  
23 also shall make appropriate findings pursuant to subdivision (a) of  
24 Section 366; and, where relevant, shall order any additional  
25 services reasonably believed to facilitate the return of the child to  
26 the custody of his or her parent or legal guardian. The court shall  
27 also inform the parent or legal guardian that if the child cannot be  
28 returned home by the 12-month permanency hearing, a proceeding  
29 pursuant to Section 366.26 may be instituted. This section does not  
30 apply in a case where, pursuant to Section 361.5, the court has  
31 ordered that reunification services shall not be provided.

32 If the child was under the age of three years on the date of the  
33 initial removal, or is a member of a sibling group described in  
34 paragraph (3) of subdivision (a) of Section 361.5, and the court  
35 finds by clear and convincing evidence that the parent failed to  
36 participate regularly and make substantive progress in a  
37 court-ordered treatment plan, the court may schedule a hearing  
38 pursuant to Section 366.26 within 120 days. If, however, the court  
39 finds there is a substantial probability that the child, who was under  
40 the age of three years on the date of initial removal or is a member

1 of a sibling group described in paragraph (3) of subdivision (a) of  
2 Section 361.5, may be returned to his or her parent or legal  
3 guardian within six months or that reasonable services have not  
4 been provided, the court shall continue the case to the 12-month  
5 permanency hearing.

6 For the purpose of placing and maintaining a sibling group  
7 together in a permanent home, the court, in making its  
8 determination to schedule a hearing pursuant to Section 366.26 for  
9 some or all members of a sibling group, as described in paragraph  
10 (3) of subdivision (a) of Section 361.5, shall review and consider  
11 the social worker's report and recommendations. Factors the  
12 report shall address, and the court shall consider, may include, but  
13 need not be limited to, whether the sibling group was removed  
14 from parental care as a group, the closeness and strength of the  
15 sibling bond, the ages of the siblings, the appropriateness of  
16 maintaining the sibling group together, the detriment to the child  
17 if sibling ties are not maintained, the likelihood of finding a  
18 permanent home for the sibling group, whether the sibling group  
19 is currently placed together in a preadoptive home or has a  
20 concurrent plan goal of legal permanency in the same home, the  
21 wishes of each child whose age and physical and emotional  
22 condition permits a meaningful response, and the best interest of  
23 each child in the sibling group. The court shall specify the factual  
24 basis for its finding that it is in the best interest of each child to  
25 schedule a hearing pursuant to Section 366.26 in 120 days for some  
26 or all of the members of the sibling group.

27 If the child was removed initially under subdivision (g) of  
28 Section 300 and the court finds by clear and convincing evidence  
29 that the whereabouts of the parent are still unknown, or the parent  
30 has failed to contact and visit the child, the court may schedule a  
31 hearing pursuant to Section 366.26 within 120 days. If the court  
32 finds by clear and convincing evidence that the parent has been  
33 convicted of a felony indicating parental unfitness, the court may  
34 schedule a hearing pursuant to Section 366.26 within 120 days.

35 If the child had been placed under court supervision with a  
36 previously noncustodial parent pursuant to Section 361.2, the  
37 court shall determine whether supervision is still necessary. The  
38 court may terminate supervision and transfer permanent custody  
39 to that parent, as provided for by paragraph (1) of subdivision (b)  
40 of Section 361.2.

1 In all other cases, the court shall direct that any reunification  
2 services previously ordered shall continue to be offered to the  
3 parent or legal guardian pursuant to the time periods set forth in  
4 subdivision (a) of Section 361.5, provided that the court may  
5 modify the terms and conditions of those services.

6 If the child is not returned to his or her parent or legal guardian,  
7 the court shall determine whether reasonable services that were  
8 designed to aid the parent or legal guardian in overcoming the  
9 problems that led to the initial removal and the continued custody  
10 of the child have been provided or offered to the parent or legal  
11 guardian. The court shall order that those services be initiated,  
12 continued, or terminated.

13 (f) The permanency hearing shall be held no later than 12  
14 months after the date the child entered foster care, as that date is  
15 determined pursuant to subdivision (a) of Section 361.5. At the  
16 permanency hearing, the court shall determine the permanent plan  
17 for the child, which shall include a determination of whether the  
18 child will be returned to the child's home and, if so, when, within  
19 the time limits of subdivision (a) of Section 361.5. The court shall  
20 order the return of the child to the physical custody of his or her  
21 parent or legal guardian unless the court finds, by a preponderance  
22 of the evidence, that the return of the child to his or her parent or  
23 legal guardian would create a substantial risk of detriment to the  
24 safety, protection, or physical or emotional well-being of the child.  
25 The social worker shall have the burden of establishing that  
26 detriment. The court shall also determine whether reasonable  
27 services that were designed to aid the parent or legal guardian to  
28 overcome the problems that led to the initial removal and  
29 continued custody of the child have been provided or offered to the  
30 parent or legal guardian. For each youth 16 years of age and older,  
31 the court shall also determine whether services have been made  
32 available to assist him or her in making the transition from foster  
33 care to independent living. The failure of the parent or legal  
34 guardian to participate regularly and make substantive progress in  
35 court-ordered treatment programs shall be prima facie evidence  
36 that return would be detrimental. In making its determination, the  
37 court shall review and consider the social worker's report and  
38 recommendations and the report and recommendations of any  
39 child advocate appointed pursuant to Section 356.5, shall consider  
40 the efforts or progress, or both, demonstrated by the parent or legal

guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child



1 will be returned to the physical custody of his or her parent or legal  
2 guardian is a compelling reason for determining that a hearing held  
3 pursuant to Section 366.26 is not in the best interests of the child.

4 The court shall inform the parent or legal guardian that if the  
5 child cannot be returned home by the next permanency review  
6 hearing, a proceeding pursuant to Section 366.36 may be  
7 instituted. The court shall not order that a hearing pursuant to  
8 Section 366.26 be held unless there is clear and convincing  
9 evidence that reasonable services have been provided or offered to  
10 the parent or legal guardian.

11 (2) Order that a hearing be held within 120 days, pursuant to  
12 Section 366.26, but only if the court does not continue the case to  
13 the permanency planning review hearing and there is clear and  
14 convincing evidence that reasonable services have been provided  
15 or offered to the parents or legal guardians.

16 (3) Order that the child remain in long-term foster care, but  
17 only if the court finds by clear and convincing evidence, based  
18 upon the evidence already presented to it, including a  
19 recommendation by the State Department of Social Services when  
20 it is acting as an adoption agency in counties that are not served by  
21 a county adoption agency or by a licensed county adoption agency,  
22 that there is a compelling reason for determining that a hearing  
23 held pursuant to Section 366.26 is not in the best interest of the  
24 child because the child is not a proper subject for adoption and has  
25 no one willing to accept legal guardianship. For purposes of this  
26 section, a recommendation by the State Department of Social  
27 Services when it is acting as an adoption agency in counties that  
28 are not served by a county adoption agency or by a licensed county  
29 adoption agency that adoption is not in the best interest of the child  
30 shall constitute a compelling reason for the court's determination.  
31 That recommendation shall be based on the present circumstances  
32 of the child and shall not preclude a different recommendation at  
33 a later date if the child's circumstances change.

34 (h) In any case in which the court orders that a hearing pursuant  
35 to Section 366.26 shall be held, it shall also order the termination  
36 of reunification services to the parent or legal guardian. The court  
37 shall continue to permit the parent or legal guardian to visit the  
38 child pending the hearing unless it finds that visitation would be  
39 detrimental to the child.





1 (i) Whenever a court orders that a hearing pursuant to Section  
2 366.26 shall be held, it shall direct the agency supervising the child  
3 and the licensed county adoption agency, or the State Department  
4 of Social Services when it is acting as an adoption agency in  
5 counties that are not served by a county adoption agency, to  
6 prepare an assessment that shall include:

7 (1) Current search efforts for an absent parent or parents or  
8 legal guardians.

9 (2) A review of the amount of and nature of any contact  
10 between the child and his or her parents or legal guardians and  
11 other members of his or her extended family since the time of  
12 placement. Although the extended family of each child shall be  
13 reviewed on a case-by-case basis, “extended family” for the  
14 purpose of this paragraph shall include, but not be limited to, the  
15 child’s siblings, grandparents, aunts, and uncles.

16 (3) An evaluation of the child’s medical, developmental,  
17 scholastic, mental, and emotional status.

18 (4) A preliminary assessment of the eligibility and  
19 commitment of any identified prospective adoptive parent or legal  
20 guardian, particularly the caretaker, to include a social history  
21 including screening for criminal records and prior referrals for  
22 child abuse or neglect, the capability to meet the child’s needs, and  
23 the understanding of the legal and financial rights and  
24 responsibilities of adoption and guardianship. If a proposed  
25 guardian is a relative of the minor, and the relative was assessed  
26 for foster care placement of the minor prior to January 1, 1998, the  
27 assessment shall also consider, but need not be limited to, all of the  
28 factors specified in subdivision (a) of Section 361.3.

29 (5) The relationship of the child to any identified prospective  
30 adoptive parent or legal guardian, the duration and character of the  
31 relationship, the motivation for seeking adoption or guardianship,  
32 and a statement from the child concerning placement and the  
33 adoption or guardianship, unless the child’s age or physical,  
34 emotional, or other condition precludes his or her meaningful  
35 response, and if so, a description of the condition.

36 (6) An analysis of the likelihood that the child will be adopted  
37 if parental rights are terminated.

38 (j) If, at any hearing held pursuant to Section 366.26, a  
39 guardianship is established for the minor with a relative, and  
40 juvenile court dependency is subsequently dismissed, the relative

1 shall be eligible for aid under the Kin-GAP program as provided  
2 in Article 4.5 (commencing with Section 11360) of Chapter 2 of  
3 Part 3 of Division 9.

4 (k) As used in this section, “relative” means an adult who is  
5 related to the minor by blood, adoption, or affinity within the fifth  
6 degree of kinship, including stepparents, stepsiblings, and all  
7 relatives whose status is preceded by the words “great,”  
8 “great-great,” or “grand,” or the spouse of any of those persons  
9 even if the marriage was terminated by death or dissolution.

10 (l) For purposes of this section, evidence of any of the  
11 following circumstances shall not, in and of itself, be deemed a  
12 failure to provide or offer reasonable services:

13 (1) The child has been placed with a foster family that is  
14 eligible to adopt a child, or has been placed in a preadoptive home.

15 (2) The case plan includes services to make and finalize a  
16 permanent placement for the child if efforts to reunify fail.

17 (3) Services to make and finalize a permanent placement for  
18 the child, if efforts to reunify fail, are provided concurrently with  
19 services to reunify the family.

20 SEC. 2. This act is an urgency statute necessary for the  
21 immediate preservation of the public peace, health, or safety  
22 within the meaning of Article IV of the Constitution and shall go  
23 into immediate effect. The facts constituting the necessity are:

24 Chapters 416 and 918 of the Statutes of 2002 amended the law  
25 governing notice in dependency proceedings. Those chapters  
26 failed to make conforming code reference changes. Without  
27 conforming legislation, the Welfare and Institutions Code contains  
28 conflicting notice provisions. This conflict will result in confusion  
29 among courts, attorneys, case workers, and those affected by  
30 dependency proceedings. That confusion could affect the rights of  
31 both children and their parents or guardians. Immediate action is  
32 necessary to eliminate this conflict.

